IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1116 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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VINODBHAI BACHARBIA NASIT (PATEL)

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1116 of 2001

MS SUBHADRA G PATEL for Petitioner No. 1

Mr. H.L. Jani, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 24/07/2001

ORAL JUDGEMENT

Heard learned advocate Ms. Kachhavah for the petitioner and the learned AGP Mr. Jani for the respondents. In this petition under Article 226 of the

the Constitution of India, the petitioner has challenged the impugned order of detention dated 31st December, 2000 actually executed on 1st January, 2001 passed by the detaining authority whereunder the petitioner has initially been ordered to be detained at the Sabarmati Jail Ahmedabad as Class II detenu. According to the grounds of detention communicated to the petitioner, in all, three offences have been registered against the petitioner wherein last offence registered is dated 11.12.2000. The petitioner has been considered to be the bootlegger as defined under section 2(b) of the PASA Act. The statements of the secret witnesses were recorded on 26.12.2000 and were verified by the detaining authority on 27.12.2000. As per the grounds of detention, the petitioner has been involved in two unregistered offences as noted by the detaining authority from the statements of the secret witnesses dated 7.10.2000 and 26.11.2000. Vide representation dated 16.1.2001, the petitioner has demanded for copies of the statements of Babu Devji etc. as stated in the said representation which were recorded by the IO concerned under section 161 of the Code of Criminal Procedure. No reply has been given by the detaining authority against the said representation. No reply has been filed by the respondents to the present petition.

Learned advocate Ms. Patel appearing for the petitioner has submitted that she has challenged the impugned order of detention on various grounds.However, according to her, the impugned order of detention is liable to be quashed on the ground of non consideration of the representation dated 16.1.2001 wherein copies of certain statements recorded under sec. 161 of the Code of Criminal Procedure, 1973 were demanded by the detenu which were forming part and parcel of the grounds of detention. Specific contention to that effect has been raised in the memo of the petition. According to her, non supply of the documents forming part and parcel of the grounds of detention would amount to non communication of grounds. According to her, non consideration of her representation would also vitiate the continued detention of the detenu and, therefore, on the said grounds, the impugned order of detention is required to be quashed and set aside. According to her, this has infringed Article 22(5) of the Constitution of India. She has submitted that the documents forming part and parcel of the grounds of detention were initially not supplied to the detenu which would amount to non communication of grounds and for which representation was made and the same was not responded by the respondents.

In support of these contentions, she has placed the reliance on the decision of the apex court in case of M. AHmedkutty v. Union of India, reported in 1990(2) SCC 1. She has also relied upon the decision reported in 2000(2) GLR 1767.

Learned AGP Mr. Jani has submitted that the relevant documents were supplied to the detenu. However, he has submitted that looking to the registered offences and two unregistered offences against the petitioner, there were compelling circumstances for booking the petitioner under the provisions of the PASA Act as the activities of the petitioner were adversely affecting the maintenance of public order. He has submitted that in view of these facts, this Court should not interfere with the impugned order of detention.

I have considered the submissions of the learned advocates for the parties. I have also considered the contentions raised by the petitioner in para 13 and 18 of the petition. By representation dated 16.1.2001, specific demand was made by the petitioner for supply of the statements recorded u/s. 161 of the Code of Criminal Procedure, 1973 which were forming part and parcel of the grounds of detention. The documents demanded under the said representation were not supplied to the petitioner. Specific contentions to that effect have been raised in the memo of petition but no reply has been filed to the petition by the respondent authorities. It should be noted that the copies of the said statements recorded u/s. 161 of the Code of Criminal Procedure which were forming part and parcel of the grounds of detention were not supplied to the detenu inspite of the detenu's representation dated 16.1.2001. As per my view, this has deprived the petitioner from making an effective representation and delay in supply of such document has vitiated the continued detention of the detenu. It is also required to be noted that though the copies of the said statements were demanded by the petitioner vide her representation dated 16.1.2001 but same have not been supplied to the petitioner and no answer in regard to supply of such documents has been given to the detenu. The view of the apex court in this regard in the decision reported in 1990(2) SCC page 1 is material. Para 19 and 20 of the said decision read as under:

"19. The next submission is that of non-supply of the bail application and the bail The next submission is that of non-supply of the bail application and the bail order. This Court, as

was observed in Mangalbhai Motiram Patel v. State of Maharashtra, [1981] 1 SCR 852, has 'forged' certain procedural safeguards for citizens under preventive detention. The Constitutional imperatives in Article 22(5) are two-fold: (a) The detaining authority must, as soon as may be i.e. as soon as practicable, after the detention communicate to the detenu the grounds on which the order of detention has been made, and (2) the detaining authority must afford the detenu the earliest opportunity of making the representation against the order of detention. The right is to make an effective representation and when some documents are referred to or relied on in the grounds of detention, without copies of such documents, the grounds of detention would not be complete. The detenu has, therefore, the right to be furnished with the grounds of detention along with the documents so referred to or relied on. If there is failure or even delay in furnishing those documents it would amount to denial of the right to make an effective representation. This has been settled by a long line of decisions: Ramachandra A. Kamat v. Union of India, [1980] (2) SCR 1072; Frances Coralie Mullin v. W.C. Kharnbra & Ors., [1980] 2 SCR 1095; Smt. Ichhu Devi Chararia v. Union of India, [1981] SCR 640; Pritam Nath Hoon v. Union of India, [1981] 1 SCR 682; Shri Tushar Thakkar v. Union of India, [1980] 4 SCC 499; Lallubhai Jogibhai Patel v. Union of India, [1981] 2 SCC 427; Kirit Kumar Chaman Lal Kundaliya v. Union of India, [1981] 2 SCC 436 and Smt. Ana Carelina D'Souza v. Union of India, [1981] Suppl. SCC 53.

20. It is immaterial whether the detenu already knew about their contents or not. In Mehrunissa v. State of Maharashtra, [1981] 2 SCC 709, it was held that the fact that the detenu was aware of the contents of the documents not furnished was immaterial and non-furnishing of the copy of the seizure list was held to be fatal. To appreciate this point one has to bear in mind that the detenu is in jail and has no access to his own documents. In Mohd. Zakir v. Delhi Administration, [1982] 3 SCC 2 16 it was reiterated that it being a Constitutional imperative for the detaining authority to give the documents relied on and referred to in the order of detention pari passue the grounds of

detention, those should be furnished at the earliest so that the detenu could make an effective representation immediately instead of waiting for the documents to be supplied with. The question of demanding the documents was wholly irrelevant and the infirmity in that regard was violative of Constitutional safeguards enshrined in Article 22(5)."

Para 12 of the decision reported in 2000(2) GLR 1767 reads as under:

"12. Thus, the correct legal position, which emerges from the aforesaid decisions is as under:

(i) Failure to furnish the copies of the documents to which only a reference or a casual or passing reference was made in the grounds of detention is not an infringement of Art. 22(5), fatal to the order of detention.

(ii) While a distinction has to be maintained between a document which has been relied upon by the detaining authority in the grounds of detention and a document which finds a mere reference in the grounds of detention, non supply of the copy of the documents relied upon in the grounds of detention is fatal to continue the detention and in such cases the detenu need not to show that any prejudice is caused to him. Non supply of such a document would amount to denial of right of being communicated the grounds and of making an effective representation against the order.

(iii) When the detenu was already on bail at the time when the detention order was passed, the detaining authority has to necessarily rely upon the bail application and the order granting bail as that would be a vital ground for ordering the detention and in such cases, the copies should also be supplied to the detenu.

(iv) What applies to a document would equally apply to furnishing translated copy of the document in the language known to and understood by the detenu, should be the document in a different language."

Therefore, in view of the non supply of the copies of the aforesaid statements which were forming part and parcel of the ground of detention, right of the detenu to make an effective representation under Art. 22 (5) of the Constitution of India has been adversely

affected and, therefore, in view of the aforesaid two decisions, the impugned order of detention is required to be quashed and set aside.

In the result, this petition is allowed. Impugned order of detention dated 31.12.2000 actually executed on 1.1.2001 passed by the detaining authority is quashed and set aside. The detenu Vinodbhai Bacharbhai Nasit (Patel) who has been detained in Sabarmati Jail Ahmedabad is ordered to be released forthwith if he is not required in any other case. Rule is made absolute accordingly with no order as to costs. DSP.

24.7.2001. (H.K.Rathod,J.)
Vyas